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Outlier long-term care services for individuals with severe maladaptive behaviors due to traumatic brain injury (NF-TBI services).

(A) Purpose.

This rule identifies a sub-population of those individuals determined to require a nursing facility (NF) level of care (LOC) for the provision of providing prior authorized intensive rehabilitation services to individuals with severe maladaptive behaviors due to traumatic brain injury (TBI). This rule sets forth:

- (1) In paragraph (C) of this rule, the criteria to determine if a individual with an NF-TBI LOC is eligible for outlier services for individuals with severe maladaptive behaviors due to TBI; and
- (2) In paragraph (D) of this rule, the conditions under which NFs or discrete units within an NF may be approved by the Ohio department of job and family services (ODJFS) as eligible providers of NF-TBI services and thereby receive payment established in accordance with rule 5101:3-3-25 of the Administrative Code in lieu of payment established in accordance with rule 5101:3-3-78 of the Administrative Code; and
- (3) In paragraph (E) of this rule, the prior authorization process for admission or continued stay for individuals who are seeking medicaid payment for NF-TBI services; and
- (4) In closing paragraphs of this rule, details about the provider agreement addendum, authorization for payment, and materials to be submitted by the provider for setting the initial and subsequent contracted provider per diem rate.

(B) Definitions:

- (1) "Closed head injury" means skull and widespread brain injury caused by external force or violence in which the dura mater cerebri and dura mater encephali (the outer membrane covering the brain) remain intact.
- (2) "Cognitive retraining" means a systematic, goal-oriented program of cognitive/perceptual exercises based on the assessment and understanding of the individual's neurofunctional deficits, that is provided by qualified practitioners, and targets functional changes by:
 - (a) Reinforcing and strengthening previously learned normal patterns of decision making, problem solving, and/or responding; or

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- (b) Establishing new patterns of cognitive activity as compensatory mechanisms for neurologic systems too impaired to allow a return to normal functioning.
- (3) "Home and community-based services (HCBS)" means services furnished under rule 5101:3-1-06 of the Administrative Code which enable individuals to live in a home setting rather than a NF, an intermediate care facility for the mentally retarded (ICF-MR), or hospital.
- (4) "Individual" for purposes of this rule, means any person who is seeking or receiving medicaid coverage of prior authorized intensive rehabilitation services for TBI that is provided by an Ohio medicaid-certified NF which holds an effective "NF-TBI services provider agreement" with the ODJFS.
- (5) "Level of care (LOC) review" is the evaluation of an individual's physical, mental and social/emotional status to determine the LOC required to meet the individual's service needs and includes activities necessary to safeguard against unnecessary utilization. LOC determinations are based upon the criteria regarding the amount and type of services needed by an individual that are set forth in rules contained in Chapter 5101:3-3 of the Administrative Code. The LOC process is also the mechanism by which medicaid vendor payment is initiated.
- (6) "Neurobehavioral rehabilitation" means a highly structured, individualized, program that incorporates the results of a neuropsychological assessment of the brain-behavior relationships, locations of injury, and the brain systems involved in the injury, to address the individual's deficiencies of intellect, personality and behavior resulting from the TBI, and to assist the individual in the development of appropriate adaptive behaviors.
- (7) "ODJFS designated outlier coordinator" means a designated ODJFS staff member who coordinates the general operations of the long term care facility outlier. This coordinator's duties include, but are not limited to the following:
- (a) Assisting with the initial approval and ongoing monitoring of outlier provider facilities; and
 - (b) Coordinating the processing of preadmission and continued stay prior authorization requests for individuals; and
 - (c) Representing ODJFS as a team member on the individual's interdisciplinary team; and

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- (d) Reviewing assessments, individual plans, day programming plans, staffing plans, and other documents; and
- (e) Work actively with other ODJFS staff, the providers of outlier services, the individuals and their representatives requesting and receiving outlier services, and other service agencies.
- (8) "Outlier prior authorization committee" means a committee organized and operated by ODJFS that makes outlier prior authorization determinations.
- (9) "Open head injury" means a skull injury with widespread brain injury caused by external force or violence in which the dura mater cerebri and/or dura mater encephali (the outer membranes covering the brain) have been penetrated.
- (10) "Preadmission screening" (PAS) means and refers to that part of the preadmission screening and annual resident review (PASARR) process, which must be met prior to any new admission to a NF and completed in accordance with rule 5101:3-3-15.1 of the Administrative Code.
- (11) "Physician" means a doctor of medicine or osteopathy who is licensed to practice medicine.
- (12) "Primary diagnosis" has the same meaning as in rule 5101:3-3-15.1 of the Administrative Code.
- (13) "Rancho los amigos (RLA) hospital levels of cognitive functioning scale" means a scale designed to measure and track an individual's progress regarding levels of cognitive functioning. The RLA scale (see the appendix to this rule) has been used as a means to develop "level specific" treatment interventions and strategies designed to facilitate movement from one level to another. The RLA level of an individual is determined based on behavioral observations.
- (14) "Representative" means a person acting on behalf of an individual who is applying for or receiving medical assistance. A representative may be a family member, attorney, hospital social worker, NF social worker, or any other person chosen to act on the individual's behalf.
- (15) "Severe maladaptive behavior which precludes an individual from participating in other rehabilitation services" means any behavior or constellation of behaviors exhibited by an individual that is of such frequency

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and intensity that it creates a danger to the individual or other people and/or requires extensive formal intervention without which the individual would be unable to achieve a level of self-control sufficient to allow participation in intensive rehabilitation services such as physical therapy (PT), occupational therapy (OT), or other restorative treatments requiring the active participation of the individual. Examples of severe maladaptive behaviors include, but are not limited to, kicking, biting, scratching, spitting, hitting, throwing oneself out of a wheelchair, or other forms of physical or combined verbal and physical aggression that are symptomatic of tactile defensiveness, lack of impulse control and/or an impaired capability for self-direction secondary to TBI. Uncontrolled verbal aggression in the absence of physical aggression is not considered to be a severe maladaptive behavior which precludes an individual from participating in other rehabilitation services.

- (16) "Traumatic brain injury (TBI)," for purposes of this rule, is defined as an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgement; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. TBI also excludes brain damage due to anoxia, metabolic disorders, cerebral vascular insults, or other internal causes.

(C) Eligibility criteria for individuals.

To receive prior authorization approval for NF-TBI services, the individual must meet all the following criteria;

(1) Financial eligibility.

The individual must have been determined by the county department of job and family services (CDJFS) to meet the medicaid financial eligibility standards for institutional care; and

(2) NF level of care determination.

The individual must need a NF level of care as defined in Chapter 5101:3-3 of the Administrative Code; and

(3) PAS determination.

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PAS determination is required for the individual per rule 5101:3-3-15.1 of the Administrative Code and the individual must have received one of the following determinations:

(a) That the individual does not have indications of either serious mental illness, or mental retardation or other developmental disabilities and was not subject to further PAS review; or, if the individual was subject to further review,

(b) That the individual needs the level of services provided by a NF; and

(4) TBI injury.

The individual must have a TBI as defined in paragraph (B)(16) of this rule; and

(5) Measurement on RLA scale.

The individual must measure at least "4" on the RLA scale regarding the levels of cognition functioning; and

(6) Presence of severe maladaptive behaviors.

Within the prior twelve months the individual must have exhibited documented severe maladaptive behaviors which display the following behavioral:

(a) Lacks impulse control; and

(b) Exhibits purposeful, but dysfunctional, goal-directed behavior to obtain or avoid something; and

(c) Makes manipulative threats of harm to self, others or property to obtain this goal; and

(d) Has the physical capability to carry out the threats; and

(e) Has a history of carrying out the threats and/or currently attempts to carry out the threats.

(7) Written certification from physician.

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The individual's physician must provide written certification that a specialized rehabilitative program such as that set forth in paragraph (D)(2) of this rule is likely to result in measurable progress; and

(8) Physical ability.

The individual must be physically able to participate in an intensive rehabilitative program that:

- (a) Includes cognitive retraining as defined in paragraph (B)(2) of this rule and/or neurobehavioral rehabilitation as defined in paragraph (B)(6) of this rule; and
- (b) Utilizes extensive, formal interventions that are planned and coordinated by an interdisciplinary team comprised of professional staff who are specialists in TBI; and
- (c) Includes therapeutic and training services at least three hours per day during a five-day week spent in OT, PT, psychological, neuropsychological, and/or speech-language pathology services, in addition to physician and nursing services; and
- (d) Contains intervention strategies for the twenty-four-hour a day, seven day a week reinforcement of the cognitive retraining and/or neurobehavioral rehabilitation programs developed for the individual; and

(9) Preliminary plan for post-discharge.

The outlier provider must provide evidence of a preliminary plan for post-discharge placement and services. Such evidence must include but is not limited to a list of possible service options, assurances from residential facilities that the individual would be eligible for admission, or assurances from other resources such as family members that the individual could live with them, once the severe maladaptive behaviors have been remedied.

(D) Provider eligibility.

In order to obtain an "NF-TBI provider agreement" and thereby to qualify for enhanced payment for the provision of NF-TBI services to individuals who have received prior authorization for admission or continued stay by ODJFS, the provider must meet all of the following requirements. Prior to enrollment as an NF-TBI provider, and at regular intervals to be determined by ODJFS subsequent to that enrollment, ODJFS shall determine whether the qualifications are fulfilled

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through review of documentation of appropriate policies and procedures, completion of on-site visits, and other mechanisms as determined by the ODJFS designated outlier coordinator or ODJFS designee to be appropriate.

(1) Certified NF and consent to ODJFS oversight.

The provider must be an Ohio medicaid-certified NF and agree to cooperate with the ODJFS oversight function for provision of NF-TBI services; and

(2) Facility service requirements.

The provider must provide the services or combination of services required to meet the needs of the individual and the services must differ from those generally available in NFs in that the areas of cognitive retraining and neurobehavioral rehabilitation utilize extensive, formal interventions that are planned and coordinated by an interdisciplinary team comprised of professional staff who are specialists in TBI and in that the intensity of rehabilitative care to be provided is beyond the level payable under the payment system for the resource utilization groups, specified in rule 5101:3-3-41 of the Administrative Code. The therapeutic and training services to be authorized ordinarily would occupy most of the day, with at least three hours per day during a five-day week spent in OT, PT, psychological, neuropsychological, and/or speech-language pathology services, in addition to physician and nursing services. The individual's program plan must include cognitive retraining, as defined in paragraph (B)(2) of this rule and/or neurobehavioral rehabilitation as defined in paragraph (B)(6) of this rule. The individual's program plan must include intervention strategies for the twenty-four-hour a day, seven day a week reinforcement of the cognitive retraining and/or neurobehavioral rehabilitation programs developed for the individual; and

(3) Contracted rates.

The provider's rate will be based on materials submitted by the provider in accordance with paragraphs (H) and (I) of this rule and the methodology set forth in rule 5101:3-3-25 of the Administrative Code. ODJFS shall contract with the provider to set initial and subsequent rates. With the exception of any specific items that are direct billed in accordance with rule 5101:3-3-19 of the Administrative Code, the provider must agree to accept, as payment in full, the per diem rate established for NF-TBI services in accordance with rule 5101:3-3-25 of the Administrative Code, and to make no additional charge to the individual, any member of the individual's family, or to any other source for covered NF-TBI services; and

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(4) Dedicated facility or discrete unit of facility.

The provider will provide NF-TBI services in either a discrete, distinctly identified unit of the NF dedicated to the provision of outlier services for persons requiring NF-TBI services or in a free standing NF-TBI. ~~(If the service is delivered in a distinctly identified unit of a larger NF, the provider's state licensure process and its medicaid certification process may continue to recognize only one facility, but the Ohio medical assistance program would issue separate provider agreements to the outlier and the non-outlier units); and~~

(a) If the service is delivered in a distinctly identified unit of a larger NF, the provider's state licensure process and its medicaid certification process may continue to recognize only one facility, but the Ohio medical assistance program would issue separate provider agreements to the outlier and the non-outlier units.

(b) Unoccupied certified beds may be moved between the outlier and non-outlier units in accordance with the following:

(i) ODJFS must receive a written request from the operator of the NF at least five business days before the proposed date of the bed movement. The request should be mailed or faxed to "the Bureau of Long Term Care Facilities, 30 East Broad Street, Columbus, Ohio 43215-3414" to the attention of the facility contracting section. ODJFS will issue a written response either approving or denying the request.

(ii) Approvals will be granted for unoccupied bed moves only once per calendar quarter. At the sole discretion of the department, more than one bed movement during a calendar quarter may be authorized.

(iii) No NF shall discharge a resident earlier than is indicated in their treatment plan as a result of a request to move beds from the outlier unit to the non-outlier unit.

(iv) NFs must meet all requirements set forth in (D)(2) and (D)(7) of this rule for beds moved into the outlier unit from the non-outlier unit.

(5) Accreditation as a brain injury comprehensive integrated inpatient program.

The provider must obtain and/or retain accreditation as a brain injury comprehensive integrated inpatient program from the "commission on the

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accreditation of rehabilitation facilities" (CARF) for a distinct part TBI unit. The facility shall provide the department with copies of any communication regarding accreditation from and to the commission immediately following receipt or submittal. If the provider does not have current accreditation from CARF on the effective date of the "NF-TBI services provider agreement", the provider must be eligible for accreditation pending a site survey and expect accreditation no later than six months following the effective date of the "NF-TBI services provider agreement"; and

(6) Long-term care provider agreement.

The provider must meet the requirements for a "long-term care provider agreement for nursing facilities" (JFS 03623) as set forth in rule 5101:3-3-02 of the Administrative Code; and

(7) Facility requirements.

The provider must agree to provide the following, with the exception of any specific items that are direct billed in accordance with rule 5101:3-3-19 of the Administrative Code.

- (a) Twenty-four-hour skilled nursing care and such personal care as may be required for the health, safety, and well-being of the individual.
- (b) Dietary supplements used for oral feeding, even if written as a prescription item by a physician.
- (c) Serial casting and splinting delivered by licensed personnel.
- (d) Orthotic services delivered by licensed personnel.
- (e) Obtain and immediately submit copies to the ODJFS designated outlier coordinator or ODJFS designee upon receipt of, the reports regarding initial inpatient consultation services by professionals of the following specialties, if ordered by a physician.
 - (i) Audiology;
 - (ii) Neuropsychology;
 - (iii) Optometry;

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- (iv) Dermatology;
 - (v) Gastroenterology;
 - (vi) General surgery;
 - (vii) Gynecology;
 - (viii) Internal medicine;
 - (ix) Neurology;
 - (x) Neuropsychiatry;
 - (xi) Neurosurgery;
 - (xii) Opthamology;
 - (xiii) Orthopedics;
 - (xiv) Otorhinolaryngology;
 - (xv) Pediatrics;
 - (xvi) Physical medicine and rehabilitation;
 - (xvii) Plastic surgery;
 - (xviii) Podiatry;
 - (xix) Urology;
- (f) Therapeutic, and training services consistent with the individual program plan that ordinarily would occupy most of the day, with at least three hours per day during a five-day week from occupational therapy, physical therapy, psychology/neuropsychology, and/or speech-language pathology, as well as interventions for the twenty-four-hour a day, seven-day a week reinforcement of the cognitive retraining and/or neurobehavioral rehabilitation programs developed for the individual to

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